

Arizona Department of Financial Institutions



“AZDFI”



Southern Arizona Mortgage Lenders Association

THURSDAY, OCTOBER 16, 2008

*New Arizona and Federal Loan
Origination Laws*

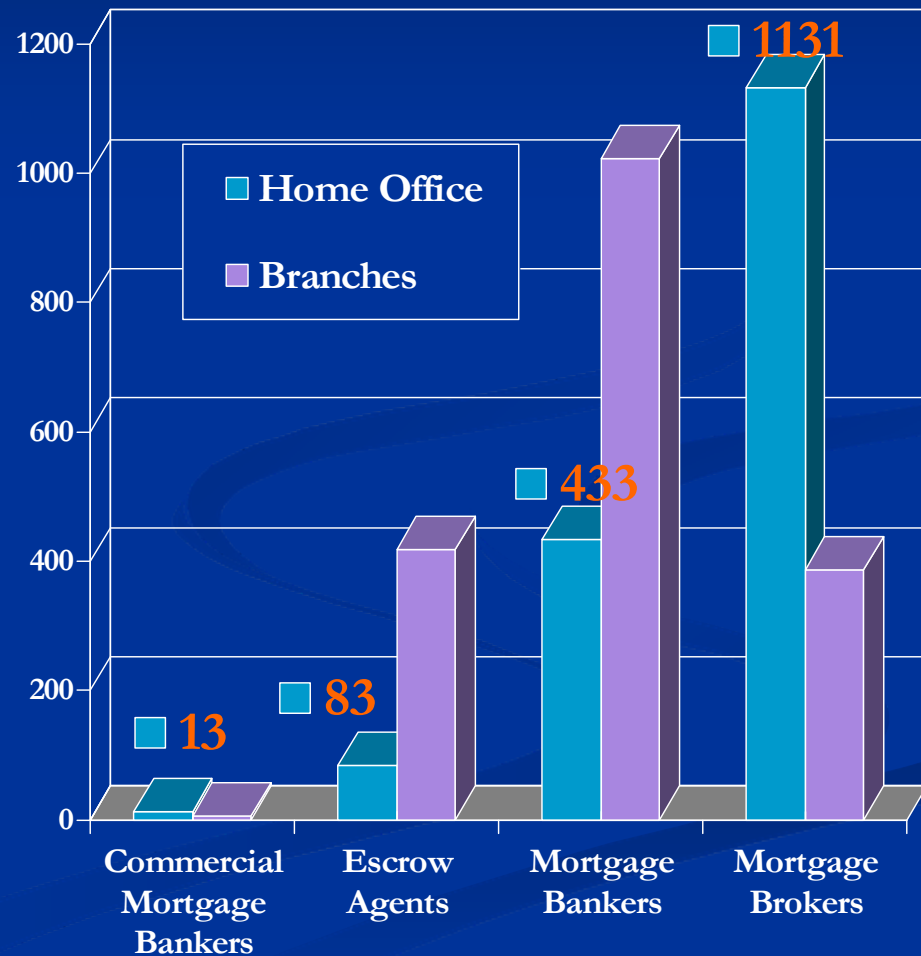
Felecia A. Rotellini, Superintendent

WWW.AZDFI.GOV

Who DFI Regulates in the Mortgage Lending Industry

- Commercial Mortgage Bankers *(13)/(5)*
- Escrow Agents *(83)/(418)*
- Mortgage Bankers *(433)/(1,022)*
- Mortgage Brokers *(1,131)/(386)*

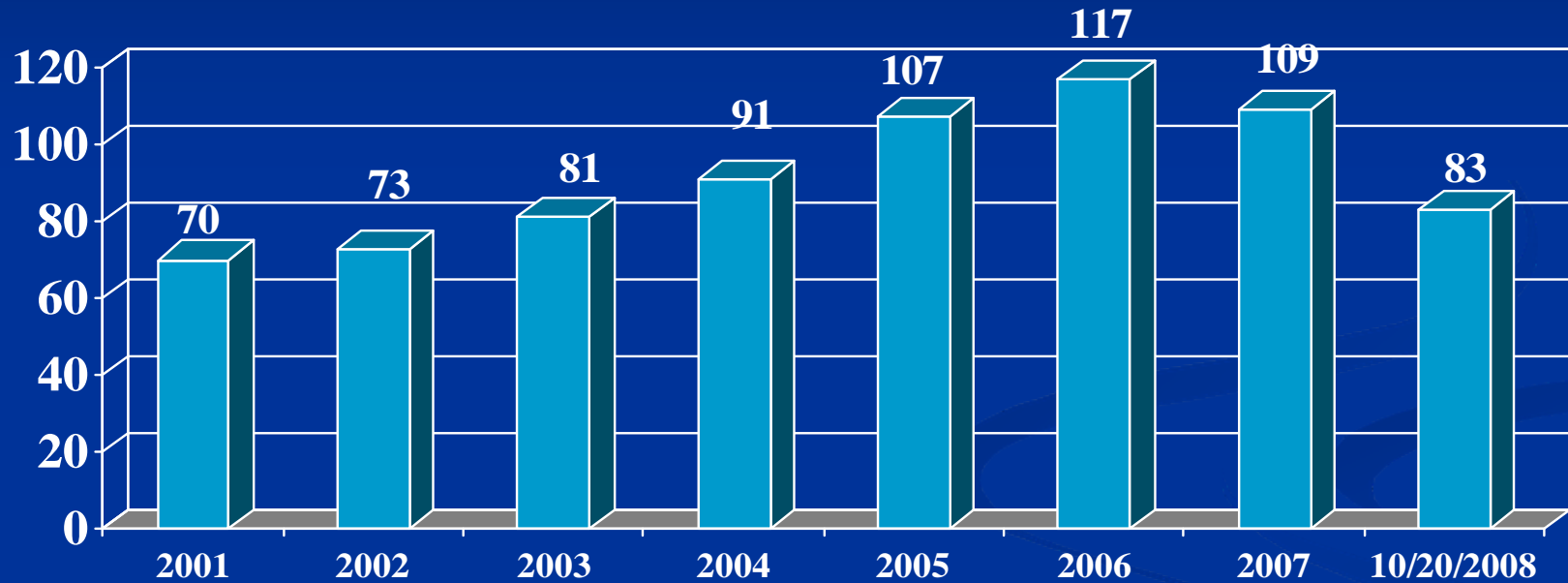
All Licenses Current as of October 14, 2008



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Growth Home Offices

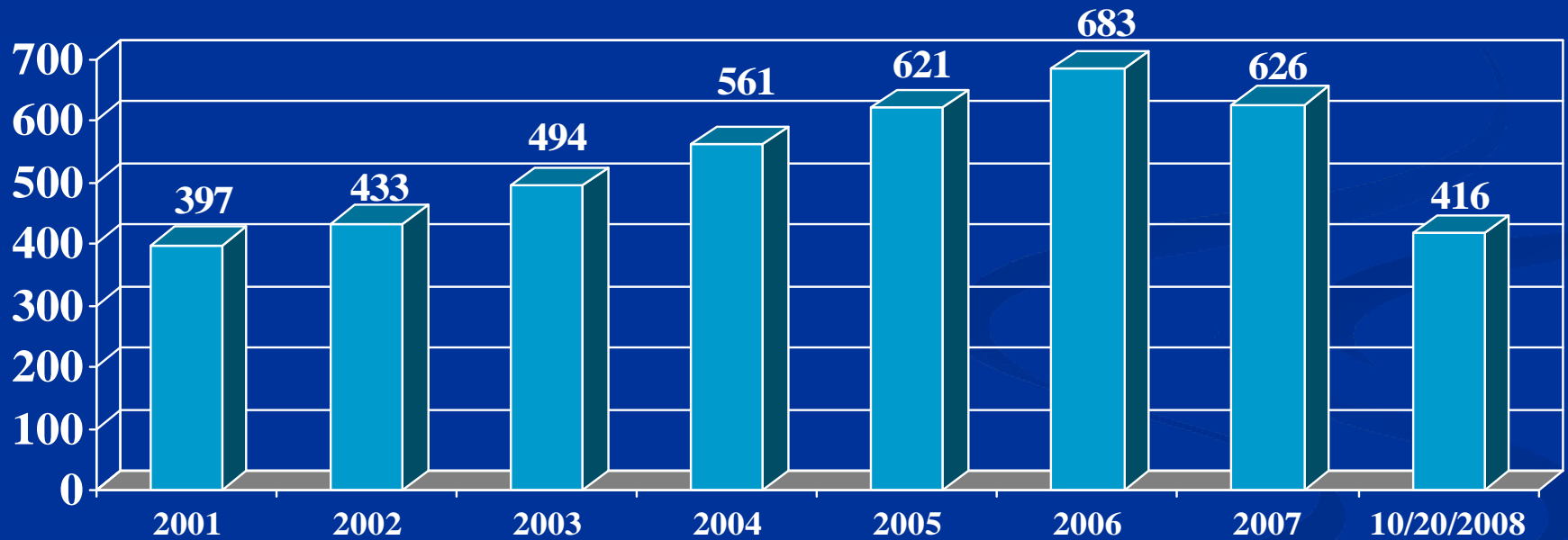
■ Escrow Agent



Overall Increase from 2001 to Present: 18.57%

AZDFI Growth Branch Offices

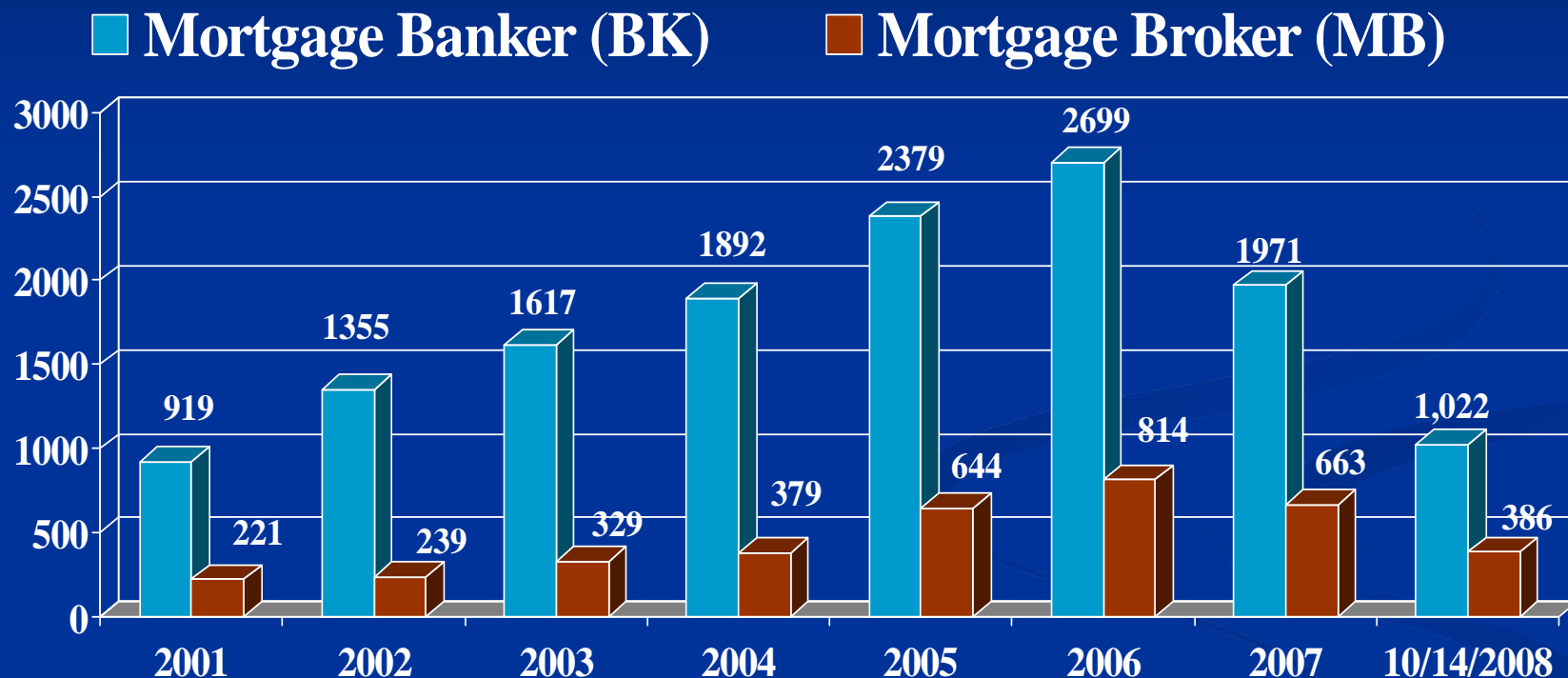
■ Escrow Agent



Increase of Branch licenses from 2001 to 2006 = 72.04%

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Mortgage Broker and Mortgage Banker Branches

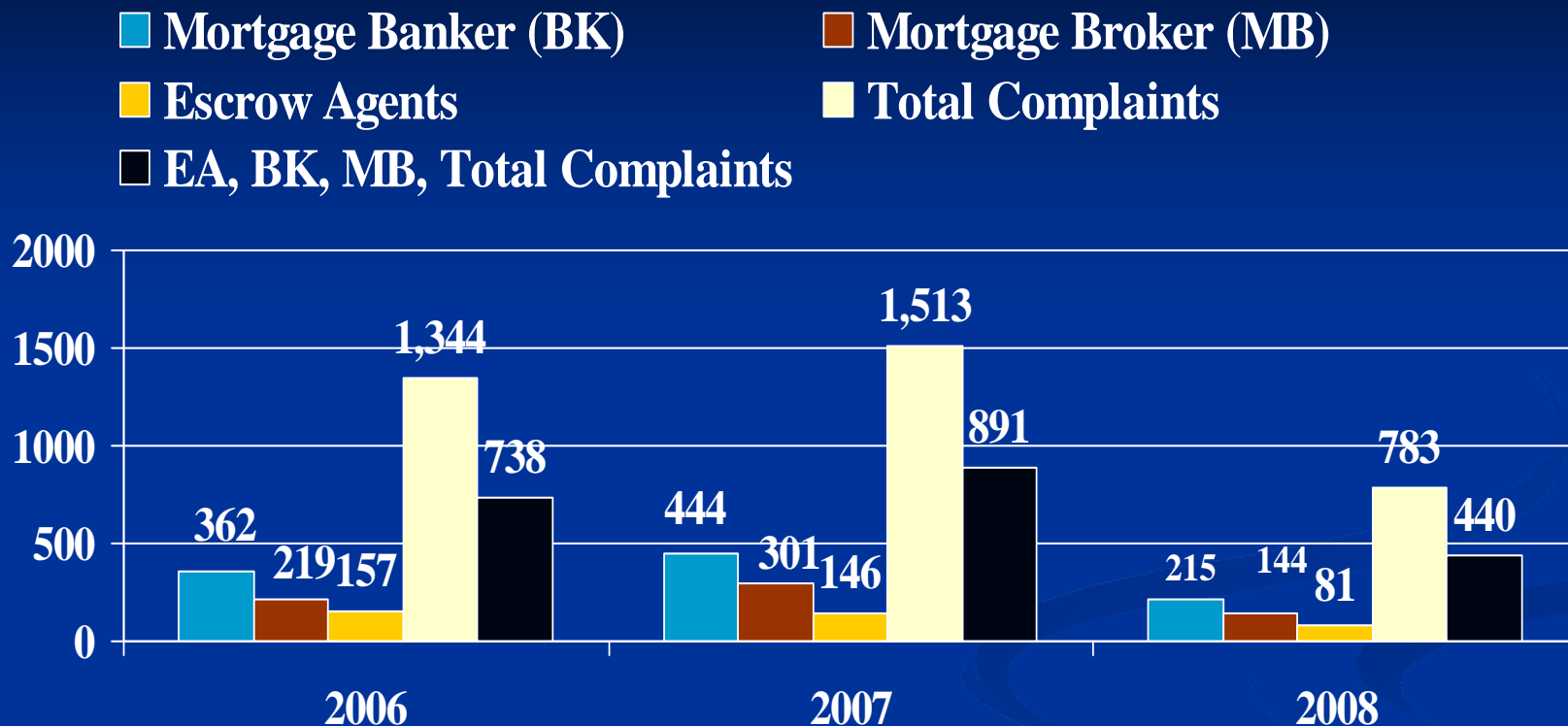


Combined Total Home Offices and Branches for Bankers and Brokers:

12/31/2001 2,253

10/16/2008 2,972

2006 and 2007 DFI Complaints



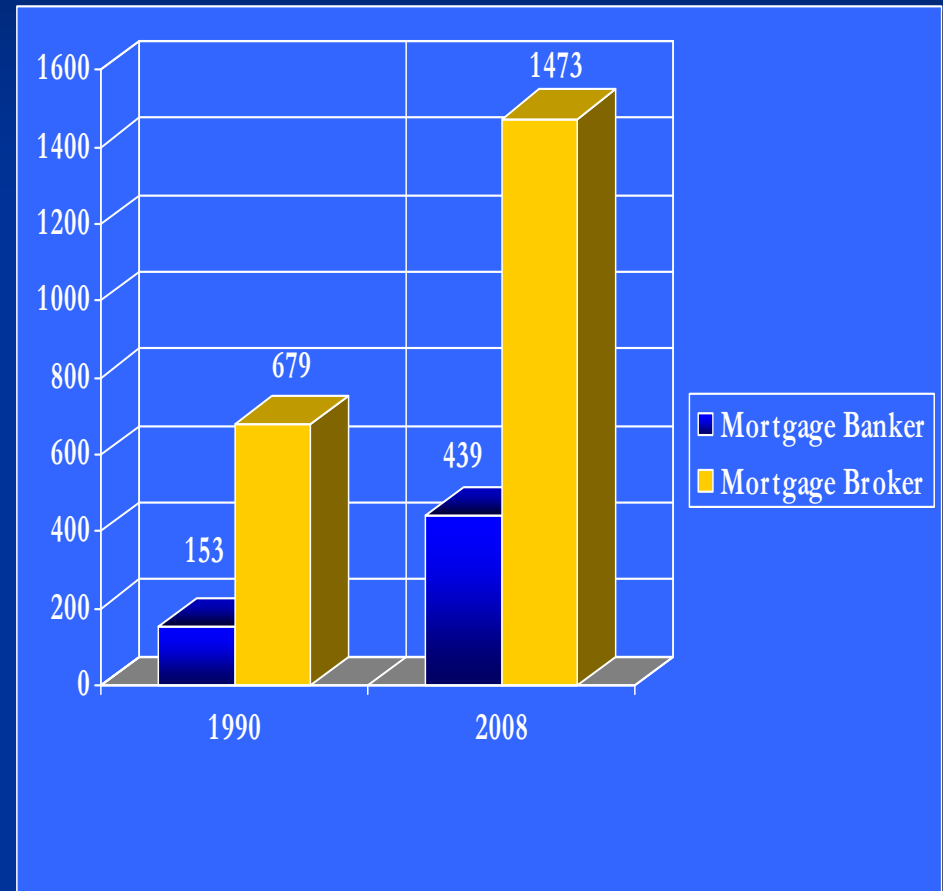
In 2006, 55 % of All DFI Complaints involved Escrow Agents, Mortgage Bankers and Mortgage Brokers

In 2007, 59% of All DFI Complaints involved Escrow Agents, Mortgage Bankers and Mortgage Brokers

In 2008, 56 % of all DFI Complaints involved Escrow Agents, Mortgage Bankers and Mortgage Brokers

That was then...and this is now

- In 1990, DFI had 24 examiners assigned to 679 mortgage brokers and 153 mortgage bankers or 1 for 35 licensees.
- In 2008, DFI has only 7 examiners assigned to 1473 mortgage brokers and 439 mortgage bankers or 1 for 275 licensees.
- In 2008 the examiner shortfall puts DFI behind on 379 broker, banker examinations and 70 escrow examinations.



That was then...and this is now

- DFI's Regulatory Enforcement Unit has a backlog of 123 mortgage/real estate fraud investigations.
- Over 20 mortgage fraud investigations were suspended last fiscal year due to funding shortfalls.
- As of 9/15/08, DFI has 978 consumer complaints open and active.

Removal Orders (A.R.S. 6-161)

■ Rick T. McCullough	08/07/08
■ Chris Bartlemus	06/12/08
■ Lisa Gorney	06/02/08
■ Wendy Kauffman, FKA Wendy Hahn	04/04/08
■ Cine Johnson	01/23/08
■ Mary Lou Pidd	11/19/07
■ Francisco Vincente Martinez	07/17/07
■ Nancy Wilson	06/05/07
■ Anna Solis	04/25/07
■ Claudia Denise Ramsey	04/19/07
■ Sandra J. Flores	04/13/07
■ Annette Marie Damico	02/07/07
■ Margie Lynn Means	01/22/07
■ Victoria Cervantes	05/04/07

Public Disclosure of Cease and Desist Orders against Unlicensed Entities

- On April 28, 2008, Governor Napolitano signed SB 1285, an amendment to Title 6, making Cease and Desist Orders of the Superintendent against unlicensed companies public upon issuance:

6-137(G)

“An order that is issued by the Superintendent under this section to a person, financial institution or financial enterprise that has engaged or is engaging in a violation that relates to unlicensed activity shall be open to public inspection.”

Public Disclosure of Cease and Desist Orders against Unlicensed Entities

- Before this law, an action against an unlicensed person or company would not become known to the public until a final order had been entered.
- This law promotes business and protects consumers by identifying persons or companies in Arizona that are improperly doing business without the required license.
- Unlicensed entities take business away from licensed entities and may harm Arizona consumers with little or no consequence.

Members of Mortgage Fraud Task Force

- AZDFI Investigators & Examiners
- FBI Agents
- IRS Agents – Criminal Division
- Attorney General Investigators
- Various Cities – Police Officers
- County Prosecutor & Sheriff Depts.
- AZ Dept of Real Estate Investigators
- HUD OIG Investigators & Auditors
- Social Security Administration OIG Investigators
- ICE
- Freddie Mac Investigators

HB 1028: Loan Originators Licensing

- Beginning January 1, 2010, a natural person shall not act as a loan originator unless licensed (See, 6-991.03 (A)).
- A person is not entitled to receive compensation in connection with arranging for or negotiating a mortgage loan if the person is not licensed (See, 6-991.02 (2)).
- The Superintendent shall not grant a loan originator license to a person other than a natural person. An applicant for an original loan originator's license shall have done both the following:
 1. Satisfactorily completed a course of study for loan originators approved by the superintendent during the year immediately preceding the time of application.
 2. Passed a loan originator's examination pursuant to Section 6-991.07 not more than one year before the granting of the license.

SB 1028: Loan Originators Licensing

A loan originator shall not:

- Collect any money or documents with an application for a mortgage loan.
- Advertise, display, distribute, broadcast or televise ...any solicitation of mortgage business.
- Make , negotiate or offer to make or negotiate for compensation, either directly or indirectly, a loan for less than \$5,000 or not secured by a mortgage or deed of trust or other lien interest in real estate.
- May not concurrently be employed by any other mortgage broker or mortgage banker.
- May not collect compensation as a real estate broker or salesperson unless both (a) the loan originator is licensed and (b) the employing mortgage broker or mortgage banker has disclosed ***at the time the application is received***, that the loan originator is receiving compensation for both mortgage broker or banker services and for real estate broker or salesperson services.

SB 1028: Loan Originators Licensing

A loan originator shall not:

- Accept any assignment of the borrower's wages or salary.
- Receive or disburse monies in servicing or arranging a mortgage loan.
- Make a false promise or misrepresent or conceal an essential or material fact in the course of mortgage broker or mortgage banker business.
- Engage in illegal or improper business practices.
- Originate a mortgage loan unless employed by a mortgage broker or mortgage banker.

Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (S.A.F.E. Act)

Title V of the Housing and Economic Recovery Act of 2008

- Signed into Federal Law July 30, 2008
 - Sec. 1504: (a) In General ... an individual may not engage in the business of a loan originator without first –
 1. obtaining, and maintaining annually –
 - (A) a registration as a registered loan originator for a bank or credit union; or
 - (B) a license as a State licensed loan originator for a mortgage company;
 - and 2. Obtaining a unique identifier.
 - 2. Obtaining a unique identifier.
- Sec. 1504: (b) (1) A loan processor or underwriter who does not represent to the public that such individual can or will perform any of the activities of a loan originator shall not be required to be a state-licensed loan originator.
- Sec. 1504: (b) (2) An independent contractor may not engage in residential mortgage loan origination activities as a loan processor or underwriter unless such independent contractor is a State-licensed loan originator.

S.A.F.E Mortgage Licensing Act of 2008

- **Sec. 1505:** Applicant must submit to NMLS
 - fingerprints for national and international criminal background check by FBI & state;
 - personal history, experience, independent credit report, information about administrative, civil or criminal findings by any governmental jurisdiction;
 - prove pre-licensing education requirements have been passed; and
 - meet net worth or surety bond requirement of Sec. 1508(d)(6).

- Sec. 1508: Secretary of HUD must determine that state's licensing law meets minimum requirements including:

Requiring licensees to pass a written test following 20 hours of pre-licensing educational requirements that must include:

- 3 hours Federal law and regulations,
- 3 hours of ethics related to fraud, consumer protection, and fair lending issues, and
- 2 hours related to nontraditional mortgage product marketplace

All courses must first be reviewed and approved by NMLS.

S.A.F.E Mortgage Licensing Act of 2008

State law must, in addition, require the following:

- applicants must obtain a “unique identifier” from NMLS,
- licensing of loan originators,
- each applicant must submit to NMLS a credit report, personal history, and undergo a FBI fingerprint check for a national criminal history background check,
- a minimum net worth or bonding of loan originators that reflects the dollar amount of loans originated by the loan originator,
- a mechanism for assessment of civil money penalty for individuals acting as mortgage originators without a valid license or registration, and
- a process for challenging information in NMLS and reporting violations, enforcement actions and other relevant information to NMLS.

NMLS – Nationwide Mortgage Licensing System

- The Conference of State Bank Supervisors (CSBS) in cooperation with the American Association of Residential Mortgage Regulators (AARMR) established the State Regulatory Registry LLC (SRR) on September 21, 2006.
- SRR operates the Nationwide Mortgage Licensing System.
- The Nationwide Mortgage Licensing System (NMLS) is a web-based system that allows state licensed mortgage lenders, mortgage brokers, and loan originators to apply for, amend, update or renew a license online for all participating state agencies.

NMLS – Nationwide Mortgage Licensing System

- The fourteen states currently using NMLS are Connecticut, Louisiana, Mississippi, North Carolina, New Hampshire, Vermont, Idaho, Iowa, Kentucky, Massachusetts, Nebraska, New York, Rhode Island and Washington.
- To date, 42 state agencies representing 40 states have committed to participate in the NMLS.
- Arizona will participate in the NMLS in 2009.
 - Renewal dates for mortgage brokers and mortgage bankers have been changed to December 31.

SB 1028 & S.A.F.E. Act

SB 1028:

- Makes no mention of either a “unique identifier”.
- Has no minimum net worth or bonding requirement for loan originators.
- Is silent about NMLS.

S.A.F.E. Act

- All applicants must obtain a “unique identifier” from NMLS.
- A minimum net worth or bonding of loan originators that *reflects the dollar amount of loans originated by the loan originator.*
- A process for challenging information in NMLS and reporting violations, enforcement actions and other relevant information to NMLS

HB 1028 & S.A.F.E. Act

HB 1028:

- Requires pre license course of study; with discretionary waiver.
- Continuing Education unit defined as fifty minute period. Need 6 units per year.
- Course of study and testing must be approved by the Superintendent.
- Applicant may not take test more than two (2) times in a 12 month period.

S.A.F.E. Act

- Minimum educational requirements of 20 hours, including eight hours of specific education, with **no waiver for prior experience.**
- Required continuing education of 8 hours per year.
- Educational courses and testing shall be reviewed and approved by NMLS.
- Applicant may retake a test 3 consecutive times, 30 days after the preceding test, upon failing 3 times, applicant shall wait 6 months before taking test again.

SB 1028 & S.A.F.E. Act

SB 1028:

- Requires an employer to conduct a reasonable investigation of background, honesty, truthfulness, integrity and competency of employee before hiring.
 - Licensing requirements:
 - Person of honesty, truthfulness or good character;
 - Has not violated any law, rule or order;
 - Has not been convicted of a felony or crime = breach of trust/dishonesty;
 - Has no final judgments or orders against applicant re: fraud, deceit./misrepresentation or conduct contrary to interest of the public;
 - No misstatements or suppressed or withheld information on license application.

S.A.F.E. Act

- Applicant has not been convicted, pled guilty or nolo contendere to, a felony in a domestic, foreign or military court (a) during 7-year period prior to application; or (b) at any time, if such felony involved an act of fraud, dishonesty, or breach of trust, or money laundering.
- Applicant must demonstrate financial responsibility, character and general fitness such as to command the confidence of the community and to warrant a determination that the loan originator will operate honestly, fairly, and efficiently within the purposes of this title.

Wizard of ID

by parker and hart

